

REPRESENTATIVE FOR PETITIONERS:

Veronica Bennu, Attorney

REPRESENTATIVE FOR RESPONDENT:

Mary Lou Benell, Chief Deputy Township Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Speedway SuperAmerica, LLC and)		
Marathon Ashland Petroleum, LLC ¹)		Petitions: See Attached Table 1
)	
Petitioners,)		Marion County
)	Washington Township
v.)		
)	Personal Property
Washington Township Assessor,)		Assessment Years: 2003 and 2004
)	
Respondent.)		

Appeal from the Final Determination of the
Marion County Property Tax Assessment Board of Appeals

April 14, 2008

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the evidence and arguments presented in this case. The Board now enters findings of fact and conclusions of law on the following issues:

Issue 1 - Are the subject cold storage areas (or walk-in coolers) at the Petitioners' gas stations/convenience stores real or personal property?²

Issue 2 - Were the auditor's allocable inventory cost adjustments correct?

¹ Speedway SuperAmerica, LLC and Marathon Ashland Petroleum, LLC are wholly owned subsidiaries of Marathon Petroleum Company, LLC. Eleven of the Petitioners' stores are the subjects of these twenty one appeals.

² The Petitioners used the terms "walk-in cooler" and "cold storage area" interchangeably.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROCEDURAL HISTORY

1. The Petitioners filed Forms 131, petitioning the Board for an administrative review from determinations of the Marion County Property Tax Assessment Board of Appeals (PTABOA) that are dated November 17, 2006. The Form 131 Petitions were filed on December 14, 2006.

HEARING FACTS AND OTHER MATTERS OF RECORD

2. Paul Stultz, the designated Administrative Law Judge, held the administrative hearing for these twenty-one petitions in Indianapolis, Indiana on January 15, 2008. The Administrative Law Judge did not conduct an on-site inspection of any property.
3. The following persons were sworn and presented testimony at the hearing:
 - For the Petitioners - DeWayne Wendt, tax consultant, Marathon Petroleum Company, LLC,
 - For the Respondent - Mary Lou Benell, Chief Deputy Assessor.
4. The Petitioner presented the following exhibits:
 - Petitioners Exhibit 1 - Floor plan of one store showing the walk-in cooler,
 - Petitioners Exhibit 2 - Photograph taken inside the cooler,
 - Petitioners Exhibit 3 - Photograph of glass doors and shelving,
 - Petitioners Exhibit 4 - Photograph of shelving and inventory inside the cooler,
 - Petitioners Exhibit 5 - Photograph of glass doors and shelving,
 - Petitioners Exhibit 6 - Photograph of glass doors and shelving,
 - Petitioners Exhibit 7 - Photograph of shelving and inventory inside the cooler,
 - Petitioners Exhibit 8 - Photograph taken inside the cooler,
 - Petitioners Exhibit 9 - Photograph taken inside the cooler,
 - Petitioners Exhibit 10 - Photograph taken inside the cooler,
 - Petitioners Exhibit 11 - DVD of store being constructed.
5. At the request of the Administrative Law Judge, the following exhibits were presented on January 31, 2008, for the Respondent:

Respondent Exhibit 1 - Request for additional evidence with handwritten note,

Speedway SuperAmerica, LLC and Marathon Ashland Petroleum, LLC

Findings and Conclusions

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Respondent Exhibit 2 - Property record cards of the eleven locations.

6. The following additional items are recognized as part of the record of proceedings:
 - Board Exhibit A - The 21 Petitions,
 - Board Exhibit B - Notices of Hearing,
 - Board Exhibit C - Hearing sign in sheet,
 - Board Exhibit D - Motion to be admitted pro hac vice and letter granting motion,
 - Board Exhibit E - List of 21 appeals,
 - Board Exhibit F - List of assessments of record and the Petitioners' proposed assessments for the 21 appeals,
 - Board Exhibit G - Request for additional evidence,
 - Board Exhibit H - Post-hearing submission waiver.
7. The PTABOA's determination of the assessed values of the personal property and the personal property assessments proposed by the Petitioners are listed on Table 1, which is attached to this determination.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

8. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
9. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
10. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

ANALYSIS

11. The Petitioners presented the following evidence:
 - A. The contested feature is a real property cold storage room. The Respondent erroneously classified this area as a personal property walk-in cooler during an audit of the Petitioners' personal property returns. *Wendt testimony.*
 - B. Photographs and a DVD from these sites reveal the techniques used to construct the cold storage areas. *Wendt testimony.* The walk-in storage area is constructed on-site. Tracks are initially screwed to the floor. The cooler panels are then set into the tracks and interlocked, creating a rubberized seal. The panels are first attached to trusses. Then steel studs are attached for framing and the frame is covered with drywall. The unit is entirely assembled on site. The coolers are not preassembled units that can simply be placed in the desired area. Once a cooler unit is disassembled, it becomes worthless because the integrity of the cooling seals is broken in the process. Accordingly, the coolers are left in a building when an older store is demolished. *Pet'rs Ex. 11.*
 - C. The cold storage areas are intended to be permanent additions to the buildings. *Wendt testimony.*
 - D. The allocable inventory cost adjustments made by the auditors are incorrect because they covered gasoline and diesel fuel. *Wendt testimony.*

12. The Respondent presented the following evidence:
 - A. Cold storage rooms are larger than walk-in coolers. The contested feature is personal property because its back walls merely abut the exterior wall. The back walls of the cooler are not part of the building's exterior walls. *Benell testimony.*
 - B. The allocable inventory cost adjustments made by the auditors are incorrect. They should not cover gasoline and distillates. *Benell testimony.*
13. Unfortunately, the original personal property returns and the audit are not in evidence. There is no evidence that proves what the audit's exact changes were or what amount was added to the personal property value as a result of the reclassification of the cold storage areas. In addition, nothing establishes when the changes were made. The same is true regarding the inventory cost adjustments. This lack of information precludes the Board from making a determination of exactly what the corrected assessments should be.
14. Nevertheless, the Petitioners provided sufficient evidence to establish the current assessments should be changed.
 - A. Built-in cold storage rooms are classified as real property. Prefabricated, walk-in cold storage areas are classified as personal property. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch.1 at 8-9 (incorporated by reference at 50 IAC 2.3-1-2); 50 IAC 4.2-4-10(d).
 - B. The Petitioners' evidence establishes the cold storage area is not prefabricated—it was constructed on the site as a built-in part of the building. The photographs and video show the walls are permanently attached to the building. They are not movable partitions. The evidence further establishes the contested feature is a permanent addition to the structure and would be left with a building when it is demolished. It is not the kind of thing that could be successfully moved and used again.

- C. The Petitioners made a case the disputed feature should be classified as real property under any commonly understood meaning of that term.
- D. The Respondent failed to support its characterization of prefabrication with probative evidence. The Respondent offered no substantial explanation or authority for its argument that the walls must be directly attached to the exterior walls of the building in order to classify the cold storage rooms as real property. It offered no substantial explanation or authority to support its argument that the size of the contested area supports the classification of the cooler units as personal property. Such unsubstantiated conclusions do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- E. The parties agreed the allocable inventory cost adjustments made by the auditors are incorrect because they covered gasoline and diesel inventory. Absent the parties' agreement, the evidence would not be sufficient to support ordering any change on this issue. But the acknowledged error with the audit changes should not be ignored.

SUMMARY OF FINAL DETERMINATION

- 15. The Board finds in favor of the Petitioners on both issues and orders that each of the disputed personal property valuations be changed. The disputed areas in the Petitioners' gas stations/convenience stores must be regarded as built-in cold storage rooms that are classified as real property. The amounts that the audit added for them as personal property must be removed. Furthermore, the audits' allocable inventory cost adjustments should be reduced so that they do not cover gasoline or diesel inventory.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

Chairman, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>

Table 1
Washington Township

Year	Parcel or Key #	Petition #	Address	Current Assessment	Petitioner's Assessment
2003	H135468	49-800-03-1-7-01768	5415 East 65th Street	459,190	435,200
2003	H130922	49-800-03-1-7-01769	4960 East 56th Street	237,850	226,010
2003	H130921	49-801-03-1-7-01770	4566 College Avenue	83,320	81,080
2003	H130848	49-800-03-1-7-01771	8202 Allisonville Road	172,520	163,850
2003	H130846	49-800-03-1-7-01772	6198 Allisonville Road	373,080	346,340
2003	H130845	49-800-03-1-7-01773	7103 Keystone Avenue	191,010	183,680
2003	H130838	49-801-03-1-7-01774	6419 College Avenue	103,410	101,760
2003	H130835	49-801-03-1-7-01775	2909 East 46th Street	81,750	80,450
2003	H130834	49-800-03-1-7-01776	1340 West 86th Street	227,380	216,690
2003	H118923	49-800-03-1-7-01777	3131 East 96th Street	92,630	87,250
2004	H137828	49-800-04-1-7-01904	6001 Michigan Road	320,710	300,010
2004	H135468	49-800-04-1-7-01905	5415 East 65th Street	364,550	345,360
2004	H130922	49-800-04-1-7-01906	4960 East 56th Street	194,660	185,320
2004	H130921	49-801-04-1-7-01907	4566 College Avenue	80,590	78,120
2004	H130848	49-800-04-1-7-01908	8202 Allisonville Road	174,420	165,180
2004	H130846	49-800-04-1-7-01909	6198 Allisonville Road	290,580	270,020
2004	H130845	49-800-04-1-7-01910	7103 Keystone Avenue	159,250	151,900
2004	H130838	49-801-04-1-7-01911	6419 College Avenue	90,370	88,880
2004	H130835	49-801-04-1-7-01912	2909 East 46th Street	84,990	83,360
2004	H130834	49-800-04-1-7-01913	1340 West 86th Street	229,300	216,730
2004	H118923	49-800-04-1-7-01914	3131 East 96th Street	93,790	88,410